

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Scondy LLC d/b/a Aqua Palace,
Appellant,

v.

Pottawattamie County Board of Review,
Appellee.

ORDER

Docket No. 13-78-0482
Parcel No. 7443-06-426-003

On June 25, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Owner Scott Rolenc represented Scondy LLC d/b/a Aqua Palace. Assistant County Attorney Leanne Gifford represented the Board of Review. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Scondy LLC is the owner of commercial property located at 810 Woodbury Avenue, Council Bluffs, Iowa. The property's January 1, 2013, assessment was \$1,000,500 representing \$336,490 in land value and \$664,010 in improvement value. The property is operated as Aqua Palace and includes an 8664 square-foot retail building with an attached 1012 square-foot brick garage and 300 square feet of canopy. It was built in 1994. There is also warehouse on the property, which was built in two phases according to the testimony of the owner and the property record card. The original portion of the metal warehouse is 3600 square feet and was built in 2003. A 3000 square-foot addition was constructed in 2012. The warehouse's foundation is concrete and the interior (ceiling and walls) is unfinished. The site is 3.13 acres. (Exhibit 24, site outlined in black).

Scondy protested the assessment to the Pottawattamie County Board of Review on the grounds that the assessment was not equitable as compared with the assessments of other like property and that the property was assessed for more than authorized by law under Iowa Code sections 441.37(1)(a)(1) and (2). The Board of Review denied the protest.

Scondy then appealed to this Board. It now contends \$650,000 would be a reasonable assessment.

Owner Scott Rolenc testified on behalf of Scondy. Rolenc asserts there is high vacancy around his property, with about 400,000 to 500,000 square feet of leasable property that has been vacant for up to six years. He does not believe the assessment reflects any reductions for this market condition; however, he did not offer an opinion as to what the reduction should be for the vacancy he has observed.

Scondy submitted 20 exhibits in support of its claims. We do not find it necessary to recite all of the evidence and testimony as much of it has no relevance to an equity or market value claim. The following chart outlines the properties Scondy submitted as comparables for both claims.

Exhibit #	Property Address	Classification	Sale Date
4	3403 S 11th St	Commercial	2011
7	1705 McPherson Ave	Commercial	2011
8	1751 Madison Ave (JC Penny)	Commercial	2013
9	1751 Madison Ave (Target)	Commercial	2013
10	41903 Industrial Dr	Industrial	2012
11	1310 S 17th St	Commercial	2012
12	532 Woodbury Ave	Commercial	N/A
13	1011 34th Ave	Commercial	2012
14	19287 Conifer Ln	Commercial	2012
16	Vacant Land parcel	Residential	N/A
18	1851 Madison Ave	Commercial	N/A

First, we note that two properties had different classifications and are therefore not relevant for an equity comparison. Several properties are not reasonably similar to the subject property as they have over 50,000 square-feet of building area and are part of a larger mall complex. Additionally, some of the sales that occurred between 2011 and 2013 were abnormal transactions because they were multi-parcel transactions or sold from foreclosure. Finally, none of the sales were adjusted to account for differences between them and the subject property in order to support a market value claim.

Scondy's equity argument specifically regards its land valuation. Essentially, Rolenc attempted to find a per-square-foot value from these comparable sales or the properties' assessments, and then apply that figure to the Scondy property. First, this is not proper evidence to support an equity claim. Further, Rolenc's analysis of these properties is not representative of how assessments or market value is determined. For example, Rolenc did not consider whether the properties were truly comparable, whether sales prices required adjustments for differences or abnormal sale conditions, and he attempted to use some assessments to derive this figure. Ultimately, his calculations are irrelevant as his analysis was based on properties that were not comparable or not representative of market value transactions. For these reasons, we give this evidence no consideration for either of Scondy's claims.

Rolenc also tried to recreate a cost analysis by using the sales and assessments of the properties Scondy submitted and applying his mathematical conclusions to the cost sheet from the property record card. (Exhibit 19). Based on this document he asserts the correct value of the subject should be roughly \$650,000. Because we have already identified his math is not consistent with typical appraisal or assessment methodology and there were noted errors in his calculated depreciations, we give this analysis no consideration.

Rolenc also asserts his metal warehouse building is incorrectly valued. He submitted two documents indicating the costs to construct the original building and addition. (Exhibits 2 & 3). He asserts the assessment should not be for more than his total cost of roughly \$83,000. However, he also testified he was the general contractor on both improvement phases. For this reason, we do not find his costs alone accurately reflect market value because it would not include entrepreneurial profit or incentive.

In addition, he testified that due to faulty construction, the roof on the original portion of the warehouse required repair that should reduce his assessed value. He submitted a default judgment in his favor awarding roughly \$75,000 worth of damages. (Exhibit 22). The award includes damages to personal property, and Rolenc did not know what the actual estimated repair costs were for the roof. Despite this, he asserts his property's assessed value should be reduced by the entire \$75,000, even though he acknowledges this award reflects personal property.

The Board of Review did not offer any witnesses but submitted an appraisal prepared by Patrick Schulte of Commercial Appraisers of Iowa, Inc., West Des Moines, Iowa. Schulte developed all three approaches to value and reconciled a final opinion of value for the subject property of \$870,000, as of January 1, 2013. The Board of Review concedes the appraisal shows the subject property is over-assessed. The following chart summarizes Schulte's values.

Cost Approach	\$910,000
Sales Comparison Approach	\$900,000
Income Approach	\$840,000

Rolenc was highly critical of Schulte's appraisal for a number of reasons. First, he asserts Schulte incorrectly valued the property at its highest and best use, rather than its current use. We note Schulte's opinion of the highest and best use of the currently improved subject property is also its current use. Therefore, we find no merit in this criticism.

The only criticism Rolenc makes, in which we find merit, is his disagreement with Schulte's income approach to value. Rolenc does not believe Schulte developed this approach correctly because the comparable leases Schulte used include vacant properties. (Exhibit A p. 42). Rolenc accepted six of the leases Schulte included in his analysis, although he does not identify them. Rolenc believes the rent per-square-foot should be roughly \$3.98. Ultimately, we agree that if the vacant properties are discarded from consideration, the raw rent-per-square foot is much lower than the \$7.00 per-square-foot rent that Schulte considered in his income analysis for the retail space. Rolenc argues that Schulte does not offer any support for his conclusion of \$4.00 per-square-foot rent for the subject's warehouse and garage space. Lastly, Schulte only allows for 10% vacancy when half of the properties he listed were vacant. We agree with these criticisms and find the income approach is less reliable than Schulte's other approaches.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based

on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa

law requires assessments to be at one hundred percent of market value. § 441.21(1).

Nevertheless, in some rare instances, the test may be satisfied.

Scondy's evidence did not establish inequity in the assessment under either test. The properties Scondy asserted show inequity in the assessment either had a different classification and/or were distinctly different in size. Additionally, several of the transactions were identified as abnormal sales as they were either sales from banks or multi-parcel transactions. Scondy failed to supply any sales data for comparable or similarly situated properties *and* to complete an assessment/sales-ratio analysis. Likewise, Scondy did not demonstrate the assessor failed to uniformly apply an assessing method.

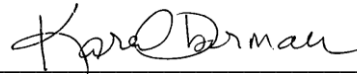
In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Scondy did not adjust the sales for differences to establish a fair market value as of January 1, 2013.

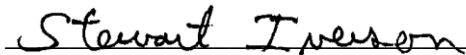
The Board of Review's appraisal, however, shows the subject property is over-assessed. While the report has some flaws, particularly in the income approach as we previously noted, the cost and sales approaches were reasonably developed and we find it to be the best indication of market value in the record.

THE APPEAL BOARD ORDERS the assessment of the property located at 810 Woodbury Avenue, Council Bluffs, Iowa, is modified to a total value of \$870,000, as of January 1, 2013. The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Pottawattamie County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

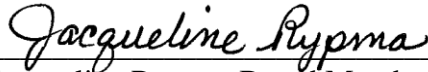
Dated this 29th day of July 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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